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In the Supreme Court of the United States

Nos. 75-62, 75-66, 75-278 and 75-306

RUSSELL L. RUNYON, et al.,
Petitioners,

vs.

MICHAEL C. McCRARY, etc., et al.,
Respondents.

MOTION OF DADE CHRISTIAN SCHOOLS, INC., FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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I.

INTRODUCTION

Pursuant to Rule 42 of the Rules of this Court, Dade Christian Schools, Inc., respectfully moves for leave to file a brief *amicus curiae* in the above referenced matters now pending on their merits before this Court.

II.

THE INTEREST OF DADE CHRISTIAN SCHOOLS, INC.

Dade Christian Schools, Inc. (Dade Christian) was chartered by the State of Florida in 1962 as a non-profit corporation to be engaged in the operation of a private school "guided in its operations, objectives, management, program and pursuits by Christian spiritual values." The founders of Dade Christian were members of the New Testament Baptist Church (New Testament), Miami, Florida, who, in response to this Court's decisions barring state-prescribed prayer and Bible reading in the public schools, were anxious to provide their children with Christian educations. Since its inception, Dade Christian has been an operating affiliate of New Testament and Dade Christian's operating policies have always been formulated and prescribed by New Testament.

Several years after Dade Christian was founded, the Dade County public schools, in compliance with federal court orders, began to take serious steps to eliminate the

vestiges of the former dual school system. The resulting public controversy caused the leadership of Dade Christian and New Testament to face, for the first time, the necessity of devising a policy on the racial composition of Dade Christian's student body. After consulting the Scriptures, the membership of New Testament decided that Dade Christian's student body should not be racially integrated; it was the consensus of the New Testament membership that racial integration of the school's student body would be contrary to the Divine scheme of things.

On July 26, 1973, Dade Christian excluded two young members of the black race from its student body solely for racial reasons. As a consequence, on August 6, 1973, Johnny Brown, Jr., and his family brought suit against Dade Christian and several of its then present and past officers for compensatory and punitive damages and injunctive relief. That action, which was filed in the United States District Court for the Southern District of Florida, Miami Division, and assigned Case No. 73-1313-Civ-JE, was premised primarily upon 42 U.S.C. §1981.

The defendants ~~registered~~ resisted the Brown family's action by:

(1) Admitting that the Brown children had been denied admission to Dade Christian solely for racial reasons;

(2) Asserting that 42 U.S.C. §1981 did not apply to a private school which does not accept governmental aid; and

(3) Claiming that Dade Christian's racially based admissions policy was beyond the reach of §1981 because it was based upon genuine religious beliefs and therefore protected by the Free Exercise of Religion Clause of the First Amendment to the United States Constitution.

United States District Judge Joe Eaton, relying upon *McCrary v. Runyon*, 515 F.2d 1082 (4th Cir., 1975), cert. granted, November 11, 1975, ____ U.S. ____ 44 USLW 3270-1, on May 28, 1975, rejected Dade Christian's defenses. Judge Eaton, on June 27, 1975, awarded the Brown family compensatory damages of $5,500.00 against Dade Christian and enjoined Dade Christian from barring the Brown children for racial reasons. Dade Christian appealed to the United States Court of Appeals for the Fifth Circuit on June 30, 1975, which assigned it Case No. 75-3260. The Fifth Circuit, on October 6, 1975, directed that Dade Christian's appeal be heard *en banc* together with the reargument of Case No. 74-1976, *Riley v. Adirondack Southern School for Girls*, 522 F.2d 622. The consolidated *en banc* hearing is presently scheduled to take place in New Orleans, Louisiana, during the week of January 19, 1976.

III.

DADE CHRISTIAN'S UNIQUE PERSPECTIVE

To the best of the undersigned's knowledge, Dade Christian is presently the *only* church-operated non-public day school engaged in litigation under 42 U.S.C. §1981. In addition, it appears that alone among the non-public day

schools engaged at this time in actions brought under §1981, Dade Christian's policy with respect to racial integration is founded upon religious beliefs.

In recent years, the growth of religiously-sponsored day educational institutions, especially those espousing Fundamentalistic views such as Dade Christian's, has been nothing short of spectacular, particularly in the southern portion of the United States. In contrast to "old line" private day schools, the species of school typified by Dade Christian appeals primarily to white, middle class families which frequently make difficult financial sacrifices in order to maintain their children in non-public schools. Such sacrifices are rarely made solely for "educational" reasons; they are often made in an effort to insure that their children are enveloped in "moral" surroundings in which they will "associate" with the "right" other children.

It is Dade Christian's opinion that its background and characteristics offer more compelling "associational" imperatives than do the profit-making private schools which were sued in *McCrary* and *Riley* and the non-profit schools affiiliated with the Southern Independent School Association, the intervenor in *McCrary*. Because the ultimate issue in the *McCrary* group of cases now pending before this Court may well be whether student-parent-school relationships in the non-public setting are, for purposes of §1981, properly viewed as "contractual" or "associational", Dade Christian respectfully submits that its unique experience in this area will enable it to make a significant contribution to this Court's resolution of this sensitive constitutional problem.

IV.

CONCLUSION

Had Judge Eaton elected not to await the Fourth Circuit's decision in *McCrary*, it is possible that Dade Christian would have been privileged to present its position on §1981 to this Court as a party litigant. The *amicus curiae* mechanism makes it possible for the same result to be achieved. For this reason, Dade Christian respectfully asks that this motion be granted.

Respectfully submitted,

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By /s/ Lawrence R. Metsch
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing motion were mailed this 8th day of December, 1975, to the following:

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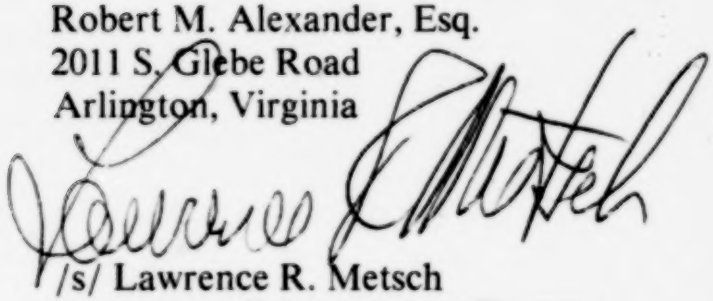

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